

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

MATTHEW D. WOLF, )  
 )  
Plaintiff, )  
 )  
v. ) Case No.: 4:22-CV-00397-PLC  
 )  
DANIEL ALTMANN, et al., )  
 )  
Defendants. )

**COUNTERCLAIMANTS' MEMORANDUM IN SUPPORT OF**  
**MOTION TO ENFORCE SETTLEMENT**

Daniel Altmann, individually and derivatively, and Botannis Labs Mo. Corp., Inc.  
("Counterclaimants"), by counsel, state as follows:

**INTRODUCTION**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] the Parties  
filed a notice of settlement with the Court. (Doc. 79).

[REDACTED]

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### **BACKGROUND**

■ [REDACTED]

On June 8, 2022, the Court referred this dispute to mediation, designating Plaintiff's counsel, Andrew Buttarro, as lead counsel. (Doc. 20). On December 19, 2022, an electronic notice of noncompliance was delivered to counsel. (Doc. 61). Following that Notice, Counterclaimants filed a Consent Motion for Leave to Designate Mediator Out of Time, along with a Designation of Neutral identifying Bradley A. Winters as mediator and setting the mediation for February 6, 2023. (Docs. 62-63). On December 28, 2022, the Court granted the Consent Motion, entered a Notice of Appointment of Neutral for Bradley Winters, and directed the filing of an ADR Compliance Report within 14 days after the ADR referral was concluded on February 16, 2023. (Docs. 64-65).

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[REDACTED] Mr. Elster filed the Notice of Settlement, stating "[t]he Parties, by counsel, hereby notify the Court that they reached a settlement in the above matter and are in the process of drafting a formal settlement document." (Doc. 79).

The Court, in response, entered an order vacating all case deadlines, denied Plaintiff's motion to dismiss without prejudice "due to the parties' reported settlement of this matter," and ordered the filing of a stipulation for dismissal, motion for leave to voluntarily dismiss the case or proposed consent judgment. (Doc. 80).

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A series of horizontal black bars of varying lengths and positions, resembling a barcode or a stylized text representation. The bars are arranged in a vertical sequence, with some being solid and others appearing as dashed or segmented lines. The overall pattern is abstract and non-representational.

## ARGUMENT

### A. MOTION TO ENFORCE SETTLEMENT STANDARDS

“Settlement agreements are generally encouraged and favored by the courts.” *Justine Realty Co. v. American Nat. Can Co.*, 976 F.2d 385, 391 (8th Cir. 1992). District courts have inherent power to enforce a settlement agreement where the terms are unambiguous. *Barry v.*

*Barry*, 172 F.3d 1011, 1013 (8th Cir. 1999). Settlement agreements are governed by contract law. *MLF Realty, L.P. v. Rochester Ass’n*, 92 F.3d 752, 756 (8th Cir. 1996). Contracts require an offer, acceptance, and consideration. "As a general rule, when the parties dispute the existence or terms of a settlement agreement, the parties must be allowed an evidentiary hearing." *Sheng v. Starkey Laboratories, Inc.*, 53 F.3d 192, 195 (8th Cir. 1995). In diversity cases, settlement is controlled by state law. *Barry*, 172 F.3d at 1013.

In Missouri, a motion to enforce a settlement adds to the underlying case a collateral action seeking specific performance of the agreement. *Eaton v. Mallinckrodt, Inc.*, 224 S.W.3d 596, 599 (Mo. 2007). The moving party must prove the existence of the agreement by clear, convincing evidence. *Id.* Clear and convincing evidence is "evidence that instantly tilts the scales in the affirmative when weighed against the evidence in opposition," so that a court is left with the "abiding conviction that the evidence is true." *Greeno v. State*, 59 S.W.3d 500, 505 (Mo. 2001).

To form an enforceable contract, parties need only reach an agreement on its "essential and material terms." *Three-O-Three Inv., Inc. v. Moffitt*, 622 S.W.2d 736, 738 (Mo. Ct. App. 1981); see *G&J Holdings, LLC v. SM Properties, LP*, 391 S.W.3d 895, 903 (Mo. Ct. App. 2013) (a "material breach" is "one that goes to the very substance or root of the agreement and cannot relate simply to a subordinate or incidental matter"). Indeed, "[a] contract will be valid and enforceable even if some terms may be missing or left to be agreed upon as long as the essential terms are sufficiently definite to enable the court to give them exact meaning." *Sansone Law, LLC v. J&M Securities, LLC*, 589 S.W.3d 74, 87 (Mo. Ct. App. 2019). In gauging whether there has been a meeting of the minds, courts look to objective manifestations of intent. *Guidry v. Charter Comm., Inc.*, 269 S.W.3d 520, 528 (Mo. Ct. App. 2008).

When interpreting contracts, courts focus on the “plain and ordinary meaning of the language used.” *Whelan Sec. Co. v. Kennebrew*, 379 S.W.3d 835, 846 (Mo. 2012). Whether a contract is ambiguous is a question of law. *Alack v. Vic Tanny Intern of Missouri, Inc.*, 923 S.W.3d 330, 337 (Mo. 1996). “An ambiguity arises when there is duplicity, indistinctness, or uncertainty in the meaning of the words used in the contract.” *Id.* A contract is not ambiguous when parties simply disagree as to its construction and meaning. *Dunn Indus. Group v. City of Sugar Creek*, 112 S.W.3d 421, 428 (Mo. 2003).

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**CONCLUSION**

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Date: April 14, 2023

Respectfully submitted,

THE ELSTER LAW OFFICE, LLC

/s/ Henry P. Elster

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*Attorney for Counterclaimants*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system this 14 day of April, 2023 upon all counsel of record.

/s/ Henry P. Elster

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